

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

ATLANTIC RECORDING CORPORATION,  
a Delaware corporation; ARISTA RECORDS  
LLC, a Delaware limited liability company;  
BMG MUSIC, a New York general  
partnership; CAPITOL RECORDS, LLC, a  
Delaware limited liability company;  
ELEKTRA ENTERTAINMENT GROUP  
INC., a Delaware corporation; FOREFRONT  
COMMUNICATIONS GROUP, INC., a  
Tennessee corporation; INTERSCOPE  
RECORDS, a California general partnership;  
LAFACE RECORDS LLC, a Delaware limited  
liability company; PRIORITY RECORDS  
LLC, a Delaware limited liability company;  
SONY BMG MUSIC ENTERTAINMENT, a  
Delaware general partnership; UMG  
RECORDINGS, INC., a Delaware corporation;  
VIRGIN RECORDS AMERICA, INC., a  
California corporation; WARNER BROS.  
RECORDS INC., a Delaware corporation; and  
ZOMBA RECORDING LLC, a Delaware  
limited liability company,

Plaintiffs,

v.

DOES 1 - 21,

Defendants.

No.

**MOTION FOR LEAVE TO TAKE  
IMMEDIATE DISCOVERY**

**NOTE ON MOTION CALENDAR:  
June 9, 2008**

**MOTION FOR LEAVE TO TAKE IMMEDIATE  
DISCOVERY - Page 1**

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## I. INTRODUCTION

Plaintiffs, record companies who own the copyrights in the most popular sound recordings in the United States, seek leave of the Court to serve limited, immediate discovery on a third party Internet Service Provider ("ISP") to determine the true identities of Doe Defendants, who are being sued for direct copyright infringement. Without such discovery, Plaintiffs cannot identify the Doe Defendants, and thus cannot pursue their lawsuit to protect their copyrighted works from repetitive, rampant infringement.<sup>1</sup>

As alleged in the complaint, the Doe Defendants, without authorization, used an online media distribution system (*e.g.*, a peer-to-peer or "P2P" system) to download Plaintiffs' copyrighted works and/or distribute copyrighted works to the public. See Declaration of Carlos Linares ("Linares Decl."), ¶ 18 (attached hereto as Exhibit A). Although Plaintiffs do not know the true names of the Doe Defendants,<sup>2</sup> Plaintiffs have identified each Defendant by a unique Internet Protocol ("IP") address assigned to that Defendant on the date and at the time of that Defendant's infringing activity. Id. Additionally, Plaintiffs have gathered evidence of the infringing activities. Id. ¶¶ 14-15, 19. Plaintiffs have downloaded a sample of several of the sound recordings each Defendant illegally distributed and have evidence of every file (at times numbering in the thousands) that each Defendant illegally distributed to the public. Id.

Plaintiffs have identified the ISP that provided Internet access to each Defendant by using a publicly available database to trace the IP address for each Defendant. Id. ¶¶ 12, 18. Here, the ISP is University of Washington ("UW"). Id. When given a Defendant's IP address

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<sup>1</sup> Because Plaintiffs do not currently know the identity of any of the Defendants, Plaintiffs cannot ascertain any of the Defendants' positions on this Application.

<sup>2</sup> When using a P2P system (*e.g.*, Ares, eDonkey, Gnutella, BitTorrent, or DirectConnect), Defendants typically use monikers, or user names, and not their true names. Linares Decl., ¶ 10. Plaintiffs have no ability to determine a Defendant's true name other than by seeking the information from the ISP. Id. ¶¶ 10, 16.

1 and the date and time of infringement, an ISP typically can identify the name and address of  
 2 the Doe Defendant (*i.e.*, the ISP's subscriber) because that information is contained in the  
 3 ISP's subscriber activity log files. Id. ¶ 16.<sup>3</sup> Plaintiffs' experience is that ISPs typically keep  
 4 log files of subscriber activities for only limited periods of time – which can range from as  
 5 short as a few days, to a few months – before erasing or overwriting the data they maintain.  
 6 Id. ¶ 25. Plaintiffs alert the ISP to the existence of the copyright claims shortly after  
 7 identifying the infringing activity and ask the ISP to maintain the log files. In most cases the  
 8 ISP presents at least some of the information necessary to identify the infringer, but not  
 9 always. Id.

10 Plaintiffs now seek leave of the Court to serve limited, immediate discovery on UW to  
 11 identify each Defendant. Plaintiffs intend to serve a Rule 45 subpoena on UW seeking  
 12 documents, including electronically-stored information, sufficient to identify each Defendant's  
 13 true name, current (and permanent) addresses and telephone numbers, e-mail addresses, and  
 14 Media Access Control ("MAC") addresses. For any IP addresses that UW cannot link to a  
 15 specific Defendant, Plaintiffs seek all documents and electronically-stored information relating  
 16 to the assignment of that IP address at the date and time the IP address was used to infringe  
 17 Plaintiffs' copyrighted sound recordings. Once Plaintiffs learn a Defendant's identifying  
 18 information, Plaintiffs will attempt to contact that Defendant and attempt to resolve the  
 19 dispute. If the dispute is not resolved and it is determined that it would be more appropriate to  
 20 litigate the copyright infringement claims in another jurisdiction, Plaintiffs will dismiss that  
 21 Defendant from the present lawsuit and re-file in the appropriate jurisdiction. Without the

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22 <sup>3</sup> ISPs own or are assigned certain blocks or ranges of IP addresses. A subscriber gains  
 23 access to the Internet through an ISP after setting up an account with the ISP. An ISP then  
 24 assigns a particular IP address in its block or range to the subscriber when that subscriber goes  
 25 "online." After reviewing the subscriber activity logs (which contain the assigned IP  
 26 addresses), an ISP can identify its subscribers by name. See Linares Decl., ¶ 16.

ability to obtain the Doe Defendants' identifying information, however, Plaintiffs may never be able to pursue their lawsuit to protect their copyrighted works from repeated infringement. Id. ¶ 23. Moreover, the infringement may be ongoing and computer evidence may be overwritten or destroyed such that immediate relief is necessary. Id. ¶¶ 21, 24. Thus, the need for the limited, immediate discovery sought in this Application is critical.

## II. BACKGROUND

The Internet and P2P networks have spawned an illegal trade in copyrighted works. See MGM Studios Inc. v. Grokster, Ltd., 545 U.S. 913, 923 (U.S. 2005). By downloading P2P software, and logging onto a P2P network, an individual can upload (distribute) or download (copy), without authorization, countless copyrighted music and video files to or from any other P2P network user worldwide. See id. at 920 (detailing the process used by infringers to download copyrighted works); A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1014 (9th Cir. 2001) (stating that infringers use P2P networks to copy and distribute copyrighted works); Universal City Studios, Inc. v. Reimerdes, 111 F. Supp. 2d 294, 331 (S.D.N.Y.), aff'd sub nom., Universal City Studios, Inc. v. Corley, 273 F.3d 429 (2d Cir. 2001) (describing a viral system, in which the number of infringing copies made available multiplies rapidly as each user copying a file also becomes a distributor of that file). Until enjoined, Napster was the most notorious online media distribution system. Grokster, 545 U.S. at 924. Notwithstanding the Napster Court's decision, similar online media distribution systems emerged that have attempted to capitalize on the growing illegal market that Napster fostered. These include Ares, KaZaA, eDonkey, BitTorrent, DirectConnect, and Gnutella, among others. Linares Decl., ¶ 6. Despite the continued availability of such systems, there is no dispute that the uploading and downloading of copyrighted works without authorization is copyright infringement. Napster, 239 F.3d at 1014-15; In re Aimster Copyright Litig., 334 F.3d 643 (7th Cir. 2003), cert. denied, 124 S. Ct. 1069 (2004). Nonetheless, at any given moment, millions

1 of people illegally use online media distribution systems to upload or download copyrighted  
 2 material. Linares Decl., ¶ 6. More than 2.6 *billion* infringing music files are downloaded  
 3 monthly. L. Grossman, *It's All Free*, Time, May 5, 2003, at 60-69.

4 The propagation of illegal digital copies over the Internet significantly harms copyright  
 5 owners, and has had a particularly devastating impact on the music industry. Linares Decl.,  
 6 ¶ 9. The RIAA member companies lose significant revenues on an annual basis due to the  
 7 millions of unauthorized downloads and uploads of well-known recordings that are distributed  
 8 on P2P networks. *Id.* ¶ 9. Evidence shows that the main reason for the precipitous drop in  
 9 revenues is that individuals are downloading music illegally for free, rather than buying it. See  
 10 In re Aimster Copyright Litig., 334 F.3d at 645.

### 11 III. ARGUMENT

12 Courts routinely allow discovery to identify "Doe" defendants. See Wakefield v.  
 13 Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999) (error to dismiss unnamed defendants given  
 14 possibility that identity could be ascertained through discovery); Valentin v. Dinkins, 121 F.3d  
 15 72, 75-76 (2d Cir. 1997) (vacating dismissal; *pro se* plaintiff should have been permitted to  
 16 conduct discovery to reveal identity of the defendant); Dean v. Barber, 951 F.2d 1210, 1215  
 17 (11th Cir. 1992) (error to deny the plaintiff's motion to join John Doe defendant where identity  
 18 of John Doe could have been determined through discovery); Munz v. Parr, 758 F.2d 1254,  
 19 1257 (8th Cir. 1985) (error to dismiss claim merely because the defendant was unnamed;  
 20 "Rather than dismissing the claim, the court should have ordered disclosure of the Officer  
 21 Doe's identity"); Maclin v. Paulson, 627 F.2d 83, 87 (7th Cir. 1980) (where "party is ignorant  
 22 of defendants' true identity . . . plaintiff should have been permitted to obtain their identity  
 23 through limited discovery").

24 Indeed, in similar copyright infringement cases brought by Plaintiffs, and/or other  
 25 record companies, against Doe defendants for infringing copyrights over P2P networks, many  
 26

1 courts, including this Court, have granted Plaintiffs' motions for leave to take expedited  
 2 discovery. See, e.g., Order, UMG Recordings, Inc. v. Does 1-2, No. CV04-0960 (RSL) (W.D.  
 3 Wash. May 14, 2004); Order, Arista Records LLC v. Does 1-16, No. 07-1641 LKK EFB  
 4 (E.D.Cal. Aug. 23, 2007); Order, Sony BMG Music Ent't v. Does 1-16, No. 07-cv-00581-  
 5 BTM-AJB (S.D. Cal. Apr. 19, 2007); Order, Loud Records, LLC v. Does 1-5, No. CV-04-  
 6 0134-RHW (E.D. Wash. May 10, 2004); Order, Maverick Recording Co. v. Does 1-4, No. C-  
 7 04-1135 MMC (N.D. Cal. Apr. 28, 2004); Order, London-Sire Records, Inc. v. Does 1-4, No.  
 8 CV 04-1962 ABC (AJWx) (C.D. Cal. Apr. 2, 2004); Order, Interscope Records. v. Does 1-4,  
 9 No. CV-04-131 TUC-JM (D. Ariz. Mar. 25, 2004) (true and correct copies of these Orders are  
 10 attached hereto as Exhibit B). This Court should not depart from its well-reasoned decisions,  
 11 or the well-reasoned decisions of other courts that have addressed this issue directly.

12 Courts allow parties to conduct expedited discovery in advance of a Rule 26(f)  
 13 conference where the party establishes "good cause" for such discovery. See UMG  
 14 Recordings, Inc., 2006 U.S. DIST. LEXIS 32821 (N.D. Cal. Mar. 6, 2000); Entertainment  
 15 Tech. Corp. v. Walt Disney Imagineering, No. Civ. A. 03-3546, 2003 WL 22519440, at \*4  
 16 (E.D. Pa. Oct. 2, 2003) (applying a reasonableness standard); Semitool, Inc. v. Tokyo Electron  
 17 Am., Inc., 208 F.R.D. 273, 275-76 (N.D. Cal. 2002); Yokohama Tire Corp. v. Dealers Tire  
 18 Supply, Inc., 202 F.R.D. 612, 613-14 (D. Ariz. 2001) (applying a good cause standard);  
 19 Energetics Sys. Corp. v. Advanced Cerametrics, No. 95-7956, 1996 U.S. Dist. LEXIS 2830,  
 20 \*5-6 (E.D. Pa. March 8, 1996) (good cause standard satisfied where the moving party had  
 21 asserted claims of infringement). Plaintiffs easily have met this standard.

22 First, good cause exists where, as here, the complaint alleges claims of infringement.  
 23 See Interscope Records v. Does 1-14, No. 5:07-4107-RDR, 2007 U.S. Dist. LEXIS 73627, \*3  
 24 (D. Kan. Oct. 1, 2007) (citations omitted) ("Good cause can exist in cases involving claims of  
 25 infringement and unfair competition); Energetics Sys. Corp., 1996 U.S. Dist. LEXIS 2830 at  
 26



\*5-6 (good cause standard satisfied where the moving party had asserted claims of infringement); see also Semitool, 208 F.R.D. at 276; Benham Jewelry Corp. v. Aron Basha Corp., No. 97 CIV 3841, 1997 WL 639037, at \*20 (S.D.N.Y. Oct. 14, 1997). This is not surprising, since such claims necessarily involve irreparable harm to the plaintiff. 4 Melville B. Nimmer & David Nimmer, Nimmer On Copyright § 14.06[A], at 14-103 (2003); see also Taylor Corp. v. Four Seasons Greetings, LLC, 315 F.3d 1034, 1042 (8th Cir. 2003); Health Ins. Ass'n of Am. v. Novelli, 211 F. Supp. 2d 23, 28 (D.D.C. 2002) ("A copyright holder [is] presumed to suffer irreparable harm as a matter of law when his right to the exclusive use of copyrighted material is invaded.") (quotations and citations omitted); ABKCO Music, Inc. v. Stellar Records, Inc., 96 F.3d 60, 66 (2d Cir. 1996).

Second, good cause exists here because there is very real danger that electronic evidence may be destroyed and the ISP may not long preserve the information that Plaintiffs seek. As discussed above, computer evidence by its very nature is subject to being overwritten. Linares Decl., ¶ 24. Evidence stored on Doe Defendants' computers may be lost as a result of any delay. Moreover, ISPs typically retain user activity logs containing the information sought for only a limited period of time before erasing or overwriting the data. Linares Decl., ¶ 25. If that information is erased, Plaintiffs will have *no* ability to identify Defendants, and thus will be unable to pursue their lawsuit to protect their copyrighted works. Id. Where "physical evidence may be consumed or destroyed with the passage of time, thereby disadvantaging one or more parties to the litigation," good cause for expedited discovery exists. Interscope Records, 2007 U.S. Dist. LEXIS 73627 at \*3 (citation omitted); See also Metal Bldg. Components, L.P. v. Caperton, CIV-04-1256 MV/DJS, 2004 U.S. Dist. LEXIS 28854, \*10-11 (D.N.M. April 2, 2004) ("Good cause is frequently found . . . when physical evidence may be consumed or destroyed with the passage of time, thereby disadvantaging one or more parties to the litigation.") (citation omitted); Pod-Ners, LLC v.

1 Northern Feed & Bean, 204 F.R.D. 675, 676 (D. Colo. 2002) (allowing the plaintiff expedited  
2 discovery to inspect “beans” in the defendant’s possession because the beans might no longer  
3 be available for inspection if discovery proceeded in the normal course).

4 Third, good cause exists because the narrowly tailored discovery requests do not  
5 exceed the minimum information required to advance this lawsuit and will not prejudice  
6 Defendants. See Semitool, 208 F.R.D. at 276 (“Good cause may be found where the need for  
7 expedited discovery, in consideration of the administration of justice, outweighs the prejudice  
8 to the responding party.”). Plaintiffs seek immediate discovery to identify Defendants;  
9 information that may be erased very soon. Plaintiffs (who continue to be harmed by  
10 Defendants’ copyright infringement, Linares Decl., ¶ 9), cannot wait until after the Rule 26(f)  
11 conference (ordinarily a prerequisite before propounding discovery) because there are no  
12 known defendants with whom to confer (and thus, no conference is possible). There is no  
13 prejudice to Defendants because Plaintiffs merely seek information to identify Defendants and  
14 to serve them, and Plaintiffs agree to use the information disclosed pursuant to their subpoenas  
15 only for the purpose of protecting their rights under the copyright laws. See Metal Bldg.  
16 Components, L.P., 2004 U.S. Dist. LEXIS 28854 at \*12 (where “the requested discovery is  
17 relevant and will be produced in the normal course of discovery,” the court was “unable to  
18 discern any prejudice or hardship to Defendant” if discovery is conducted “on an expedited  
19 basis.”).

20 Fourth, courts regularly grant expedited discovery where such discovery will  
21 “substantially contribute to moving th[e] case forward.” Semitool, 208 F.R.D. at 277. Here,  
22 the present lawsuit cannot proceed without the limited, immediate discovery Plaintiffs seek  
23 because there is no other information Plaintiffs can obtain about Defendants without discovery  
24 from the ISP. As shown by the Declaration of Carlos Linares, Plaintiffs already have  
25 developed a substantial case on the merits against each infringer. Plaintiffs’ complaint alleges  
26



1 a *prima facie* claim for direct copyright infringement. Plaintiffs have alleged that they own  
 2 and have registered the copyrights in the works at issue, and that Defendants copied or  
 3 distributed those copyrighted works without Plaintiffs' authorization. See Complaint. These  
 4 allegations state a claim of copyright infringement. Nimmer On Copyright § 31.01, at 31-3 to  
 5 31-7; Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991). In addition,  
 6 Plaintiffs have copies of a sample of several of the sound recordings that each Defendant  
 7 illegally distributed to the public and have evidence of every file that each Defendant illegally  
 8 distributed to the public. See Complaint Ex. A; Linares Decl., ¶¶ 18-19. These more complete  
 9 lists often show thousands of files, many of them sound recordings (MP3 files) that are owned  
 10 by, or exclusively licensed to, Plaintiffs. See Linares Decl., ¶ 19. Plaintiffs believe that  
 11 virtually all of the sound recordings have been downloaded and/or distributed to the public  
 12 without permission or consent of the respective copyright holders. Id. Absent limited,  
 13 immediate discovery, Plaintiffs will be unable to obtain redress for any of this infringement.

14 Finally, Plaintiffs request that the Court make clear that UW is authorized to respond to  
 15 the subpoena pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g  
 16 ("FERPA"). Though FERPA generally prohibits disclosure of certain records by federally-  
 17 funded educational institutions, it *expressly* provides that information can be disclosed  
 18 pursuant to court order. *See* 20 U.S.C. § 1232g(b)(2)(B). While Plaintiffs do not believe  
 19 FERPA prevents the disclosure of the information requested in the subpoena,<sup>4</sup> universities and  
 20 colleges have expressed concern about their obligations under FERPA, and some have taken  
 21 the position that a court order is required before they will disclose subscriber information.

22  
 23  
 24 <sup>4</sup> Plaintiffs do not concede that FERPA prevents University of Washington, from  
 25 disclosing the type of information being requested by Plaintiffs, but believe that a properly  
 26 framed court order will make resolution of that issue unnecessary.

Hence, Plaintiffs seek an appropriate order explicitly authorizing UW to comply with the subpoena under 20 U.S.C. § 1232g(b)(2)(B).

If the Court grants this Application, Plaintiffs will serve a subpoena on UW requesting documents that identify the true names and other information about Defendants within 15 business days. UW then will be able to notify its subscribers that this information is being sought, and each Defendant will be able to raise any objections before this Court in the form of a motion to quash prior to the return date of the subpoena. Thus, to the extent that any Defendant wishes to object, he or she will be able to do so.

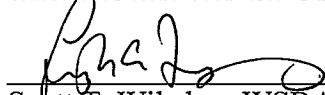
#### IV. CONCLUSION

For the foregoing reasons, the Court should grant the Application and enter an Order substantially in the form of the attached Proposed Order.

Dated this 29<sup>th</sup> day of May, 2008

Respectfully submitted,

**YARMUTH WILSDON CALFO PLLC**



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**EXHIBIT A**

The Honorable

UNITED STATES COURT  
WESTERN DISTRICT OF WASHINGTON

ATLANTIC RECORDING CORPORATION,  
a Delaware corporation; ARISTA RECORDS  
LLC, a Delaware limited liability company;  
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RECORDS INC., a Delaware corporation; and  
ZOMBA RECORDING LLC, a Delaware  
limited liability company,

Plaintiffs,

v.

DOES 1 - 21,

Defendants.

No.

Yarmuth File Sharing Litigation

**AFFIDAVIT OF CARLOS LINARES IN  
SUPPORT OF APPLICATION FOR  
LEAVE TO TAKE IMMEDIATE  
DISCOVERY**

WASHINGTON

:  
:  
: ss.  
:

DISTRICT OF COLUMBIA

AFFIDAVIT OF CARLOS LINARES - Page 1

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Exhibit A Page 11

1  
2 I, Carlos Linares, have personal knowledge of the facts stated below and, under  
3 penalty of perjury, hereby declare:

4 1. I am an attorney and Vice President, Anti-Piracy Legal Affairs for the  
5 Recording Industry Association of America, Inc. ("RIAA"), where I have been employed for  
6 over six years. My office is located at 1025 F Street, N.W., 10<sup>th</sup> Floor, Washington, DC  
7 20004. I submit this Declaration in support of Plaintiffs' Application for Leave to Take  
8 Immediate Discovery.

9 2. As Vice President, Anti-Piracy Legal Affairs, I am responsible for  
10 evaluating and contributing to online strategies for the RIAA and its member record  
11 companies who are Plaintiffs in this action, including oversight of the investigations into  
12 online infringement of copyrighted sound recordings. As such, this Declaration is based on  
13 my personal knowledge, and if called upon to do so, I would be prepared to testify as to its  
14 truth and accuracy.

15 **The RIAA's Role in Protecting Its Member Recording Industry Companies From**  
16 **Copyright Infringement**

17 3. The RIAA is a not-for-profit trade association whose member record  
18 companies create, manufacture, and/or distribute approximately ninety percent of all legitimate  
19 sound recordings produced and sold in the United States. The RIAA's member record  
20 companies comprise the most vibrant national music industry in the world. A critical part of  
21 the RIAA's mission is to assist its member companies in protecting their intellectual property  
22 in the United States and in fighting against online and other forms of piracy. All of the  
23 Plaintiffs in this action are members of the RIAA.

24 4. As part of that process, the RIAA, on behalf of its members, retains a  
25 variety of services from outside vendors to assist with its investigation of the unauthorized  
26 reproduction and distribution of copyrighted sound recordings online.

**The Internet and Music Piracy**

5. The Internet is a vast collection of interconnected computers and computer networks that communicate with each other. It allows hundreds of millions of people around the world to communicate freely and easily and to exchange ideas and information, including academic research, literary works, financial data, music, movies, graphics, and an unending and ever-changing array of other data. Unfortunately, the Internet also has afforded opportunities for the wide-scale piracy of copyrighted sound recordings and musical compositions. Once a sound recording has been transformed into an unsecured digital format, it can be copied further and distributed an unlimited number of times over the Internet, without significant degradation in sound quality.

6. Much of the unlawful distribution of copyrighted sound recordings over the Internet occurs via "peer-to-peer" ("P2P") file copying networks or so-called online media distribution systems. The most notorious example of such a system was Napster, which was enjoined by a federal court. Notwithstanding the court's decision enjoining Napster, similar online media distribution systems emerged and attempted to capitalize on the growing illegal market that Napster fostered. These include KaZaA, eDonkey, iMesh, Ares, BitTorrent, DirectConnect, and Gnutella, among others. To this day, some P2P networks continue to operate and to facilitate widespread copyright piracy. At any given moment, millions of people illegally use online media distribution systems to upload or download copyrighted material.

7. P2P networks, at least in their most popular form, refer to computer systems or processes that enable Internet users to: (1) index files (including audio recordings) into a share directory on a computer that are then searched for and transferred to other users; (2) search for files stored on other users' computers; (3) transfer exact copies of files from one computer to another via the Internet; and (4) allow users to further distribute the files to other users. P2P networks enable users who otherwise would have no connection with, or knowledge of, each other to offer to each other for distribution and copying files off of their

1 personal computers, to provide a sophisticated search mechanism by which users can locate  
2 these files for downloading, and to provide a means of effecting downloads.

3 8. The major record companies generally have not authorized their  
4 copyrighted sound recordings to be copied or distributed in unsecured formats by means of  
5 P2P networks. Thus, the vast majority of the content that is copied and distributed on P2P  
6 networks is unauthorized by the copyright owner – that is, the distribution violates the  
7 copyright laws.

8 9. The scope of online piracy of copyrighted works cannot be  
9 underestimated. The RIAA member companies lose significant revenues on an annual basis  
10 due to the millions of unauthorized downloads and uploads of well-known recordings that are  
11 distributed on P2P networks by infringers who, in virtually all cases, have the ability to  
12 maintain their anonymity to all but the Internet Service Provider (“ISP”) they use to supply  
13 them with access to the Internet.

14 10. The persons who commit infringements by using the P2P networks are,  
15 by and large, anonymous to Plaintiffs. A person who logs on to a P2P network is free to use  
16 any alias (or computer name) whatsoever, without revealing his or her true identity to other  
17 users. Thus, Plaintiffs can observe the infringement occurring on the Internet, but do not know  
18 the true names or mailing addresses of those individuals who are committing the infringement.

19 **The RIAA’s Identification of Copyright Infringers**

20 11. In order to assist its members in combating copyright piracy, the RIAA  
21 retained a third-party investigator, MediaSentry, Inc. (“MediaSentry”), to conduct searches of  
22 the Internet, as well as file-copying services, for infringing copies of sound recordings whose  
23 copyrights are owned by RIAA members. A search can be as simple as logging onto a P2P  
24 network and examining files being distributed by others logged onto the network. In gathering  
25 evidence of copyright infringement, MediaSentry uses the same functionalities that are built  
26 into P2P programs that any user of the software can use on the network.



1           12. Users of P2P networks who distribute files over a network can be  
2 identified by using Internet Protocol ("IP") addresses because the unique IP address of the  
3 computer offering the files for distribution can be captured by another user during a search or a  
4 file transfer. Users of P2P networks can be identified by their IP addresses because each  
5 computer or network device (such as a router) that connects to a P2P network must have a  
6 unique IP address within the Internet to deliver files from one computer or network device to  
7 another. Two computers cannot effectively function if they are connected to the Internet with  
8 the same IP address at the same time. In some cases, more than one computer can access the  
9 internet over a single IP address by using network address translation, in which cases the  
10 computer port being used provides further identification of the computer engaged in the on-  
11 line communication. This is analogous to the telephone system where each location has a  
12 unique number (and the port acts much like a specific telephone extension off the main switch  
13 board). For example, in a particular home, there may be three or four different telephones, but  
14 only one call can be placed at a time to or from that home. Each computer or network device  
15 is connected to a network that is administered by an organization like a business, ISP, college,  
16 or university. Each network, in turn, is analogous to an area code. The network provider  
17 maintains a log of IP address allocations. An IP address can be associated with an  
18 organization such as an ISP, business, college, or university, and that organization can identify  
19 the P2P network user associated with the specified IP address.

20           13. MediaSentry finds individuals using P2P networks to share music files  
21 over the Internet. Just as any other user on the same P2P networks as these individuals would  
22 be able to do, MediaSentry is able to detect the infringement of copyrighted works and identify  
23 the users' IP addresses because the P2P software being used by those individuals has file-  
24 sharing features enabled.

25           14. For each suspected infringer, MediaSentry downloads a number of the  
26 music files that the individual is offering to other users on the P2P network. Those music files  
27 for each such individual are listed in Exhibit A to the Complaint. MediaSentry assigns an

1 identification number to each individual for which it detects copyright infringement and  
 2 gathers additional evidence for each individual, such as metadata accompanying each file  
 3 being disseminated that demonstrates that the user is engaged in copyright infringement. That  
 4 evidence includes download data files that show for each music file the source IP address, user  
 5 logs that include a complete listing of all files in the individual's share folder at the time, and  
 6 additional data that track the movement of the files through the Internet.

7 15. After MediaSentry collects the evidence of infringement, the RIAA  
 8 engages in a painstaking process to verify whether each individual was infringing. That  
 9 process relies on human review of evidence supporting the allegation of infringement. For  
 10 each suspected infringer, the RIAA reviews a listing of the music files that the user has offered  
 11 for download by others from his or her computer in order to determine whether they appear to  
 12 be copyrighted sound recordings. The RIAA also listens to the downloaded music files from  
 13 these users in order to confirm that they are, indeed, copies of sound recordings whose  
 14 copyrights are owned by RIAA members. Exhibit A to the Complaint lists the details of these  
 15 downloaded music files. In my role as Vice President, Anti-Piracy, I provide oversight over  
 16 the review of the lists contained in Exhibit A to the Complaint and hereby attest to the veracity  
 17 of those lists. The RIAA also reviews the other evidence collected by MediaSentry.

#### 18 **The Subpoena Process to Identify Copyright Infringers**

19 16. The RIAA frequently has used the subpoena processes of Federal Rule  
 20 of Civil Procedure 45 to obtain the names of infringers from ISPs. The RIAA typically has  
 21 included in their subpoenas to ISPs an IP address and a date and time on which the RIAA,  
 22 through its agent, MediaSentry, observed use of the IP address in connection with allegedly  
 23 infringing activity. In some instances, providing the IP address alone to the ISP has been  
 24 enough to enable the ISP to identify the infringer. Providing the date and time further assists  
 25 some ISPs in identifying infringers, especially ISPs that use "dynamic IP addressing" such that  
 26 a single computer may be assigned different IP addresses at different times, including, for

1 example, each time it logs into the Internet.<sup>1</sup> Some ISPs also ask for the computer port  
 2 information to further identify the infringer. Once provided with the IP address, plus the date  
 3 and time of the infringing activity, the infringer's ISP can typically identify the computer from  
 4 which the infringement occurred (and the name and address of the subscriber that controls that  
 5 computer), sometimes within a matter of minutes.

6 17. Since 1998, the RIAA and others have used subpoenas thousands of  
 7 times to learn the names, addresses, telephone numbers, and e-mail addresses of infringers for  
 8 the purpose of bringing legal actions against those infringers.

9 **The RIAA's Identification of the Infringers in This Case**

10 18. In the ordinary course of investigating online copyright infringement,  
 11 the RIAA became aware that Defendants were distributing files to others on various P2P  
 12 networks. The user-defined author and title of the files being distributed by each Defendant  
 13 suggested that many were copyrighted sound recordings being disseminated without the  
 14 authorization of the copyright owners. The RIAA downloaded and listened to a representative  
 15 sample of the music files being distributed by each Defendant and was able to confirm that the  
 16 files each Defendant was distributing were illegal copies of sound recordings whose  
 17 copyrights are owned by RIAA members. The RIAA also recorded the time and date at which  
 18 the infringing activity was observed and the IP address assigned to each Defendant at the time.  
 19 See Complaint Exhibit A. The RIAA could not, however, determine the physical location of  
 20 the users or their identities. The RIAA could determine that Defendants were all using  
 21 University of Washington internet service to distribute the copyrighted files.

22 19. The RIAA also has collected for each Defendant a list of the files each  
 23 Defendant was distributing to the public. These lists often show thousands of files, many of  
 24 which are sound recording (MP3) files that are owned by, or exclusively licensed to, Plaintiffs.

25 <sup>1</sup> ISPs own or are assigned certain blocks or ranges of IP addresses. An ISP assigns a  
 26 particular IP address in its block or range to a subscriber when that subscriber goes "online."

1 Because of the voluminous nature of the lists, and in an effort not to overburden the Court with  
 2 paper, I have not attached to this Declaration those lists. Such lists will be made available to  
 3 the Court upon request. Exhibit A to the Complaint includes the username of the infringer if  
 4 that was available, the identification number assigned by MediaSentry for that Defendant, and  
 5 the number of audio files that were being shared by Defendant at the time that the RIAA's  
 6 agent, MediaSentry, observed the infringing activity.

7 **The Importance of Expedited Discovery in This Case**

8 20. Obtaining the identity of copyright infringers on an expedited basis is  
 9 critical to stopping the piracy of the RIAA members' copyrighted works.

10 21. First, every day that copyrighted material is disseminated without the  
 11 authorization of the copyright owner, the copyright owner is economically harmed. Prompt  
 12 identification of infringers is necessary in order for copyright owners to take quick action to  
 13 stop unlawful dissemination of their works and minimize their economic losses.

14 22. Second, infringement often occurs with respect to sound recordings that  
 15 have not yet been distributed publicly. Such infringement inflicts great harm on the initial  
 16 market for new works. New recordings generally earn a significant portion of their revenue  
 17 when they are first released, and copyright piracy during a recording's pre-release or early  
 18 release period therefore deprives copyright owners of an important opportunity to reap the  
 19 benefits of their labor.

20 23. Third, without expedited discovery, Plaintiffs have no way of serving  
 21 Defendants with the complaint and summons in this case. Infringement occurs without name  
 22 tags so Plaintiffs do not have Defendants' names or addresses, nor do they have an e-mail  
 23 address for Defendants.

24 24. Fourth, computer evidence by its very nature is subject to being  
 25 overwritten. At times, Plaintiffs have sought evidence from defendants' computers only to  
 26 find that the evidence of infringement was destroyed (intentionally or unintentionally).


1 Expedited discovery is critical to allow Plaintiffs to put Defendants on notice of the need to  
2 preserve the electronic evidence and avoid the loss of evidence.

3 25. Fifth, ISPs have different policies pertaining to the length of time they  
4 preserve "logs" which identify their users. ISPs keep log files of their user activities for only  
5 limited periods of time – which can range from as short as a few days, to a few months –  
6 before erasing or overwriting the data they maintain. If an ISP does not respond expeditiously  
7 to a discovery request, the identification information in the ISP's logs may be erased, making  
8 it impossible for the ISP to determine the identity of the infringer and eliminating the  
9 copyright owner's ability to take action to stop the infringement. The RIAA notifies the ISPs  
10 when it has identified infringement for which it will seek identifying information and requests  
11 the ISPs to preserve the information. In most cases the ISPs preserve at least some of the  
12 information necessary to identify the infringer, but not always. Some ISPs have indicated they  
13 will preserve the information for a limited time.

14 *[Remainder of page intentionally left blank.]*  
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1 I declare under penalty of perjury under the laws of the United States that the foregoing  
2 is true and correct.

3 Executed on May 23, 2008 in Washington, D.C.

4   
5 Carlos Linares

6 SUBSCRIBED AND SWORN TO before me this 23 day of May 2008.

7  
8 BRIGETTE TENOR  
9 Print Name: Brigette Tenor  
10 NOTARY PUBLIC in and for the District of  
11 Columbia, residing at Washington

12 My Commission Expires: October 14, 2008



04-CV-00960-ITP

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

UMG RECORDINGS, INC., a Delaware corporation; ATLANTIC RECORDING CORPORATION, a Delaware corporation; WARNER BROS. RECORDS INC., a Delaware corporation; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; BMG MUSIC, a New York general partnership; and VIRGIN RECORDS AMERICA, INC., a California corporation,

Plaintiffs,

v.

DOES 1 - 2,

Defendants.

No. C04-0960(w)-L

[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR LEAVE TO  
TAKE IMMEDIATE DISCOVERY

Upon the Motion of Plaintiffs for Leave to Take Immediate Discovery and the supporting Memorandum of Law, and the declaration of Jonathan Whitehead and the exhibit thereto, it is hereby:

ORDERED that Plaintiffs may serve immediate discovery on Microsoft Corporation to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control addresses for each Defendant.

[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR LEAVE TO  
TAKE IMMEDIATE DISCOVERY  
Page 1

YARMUTH WILSON CALFO PLLC  
THE IDX TOWER  
625 FOURTH AVENUE, SUITE 2500  
SEATTLE, WA 98104  
T 206 516 3900 F 206 516 3888

Exhibit B Page 21

1 IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in  
2 response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of  
3 protecting Plaintiffs' rights under the Copyright Act.

4  
5 Dated: May 14, 2008

M. S. Carmik  
United States District Judge

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[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR LEAVE TO  
TAKE IMMEDIATE DISCOVERY  
Page 2

YARMUTH WILSDON CALFO PLLC  
THE BOX TOWER  
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SEATTLE, WA 98104  
T 206 518 3400 F 206 516 3888

Exhibit B Page 22

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San Francisco, CA 94105-2994  
Telephone: (415) 268-2000  
Facsimile: (415) 268-1999  
Email: matt.jaksa@hro.com

Attorneys for Plaintiffs,  
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BMG MUSIC; CAPITOL RECORDS, INC.; ELEKTRA  
ENTERTAINMENT GROUP INC.; INTERSCOPE RECORDS; LAFACE  
RECORDS LLC; MAVERICK RECORDING COMPANY; MOTOWN  
RECORD COMPANY, L.P.; PRIORITY RECORDS LLC; SONY BMG  
MUSIC ENTERTAINMENT; UMG RECORDINGS, INC.; VIRGIN  
RECORDS AMERICA, INC.; and WARNER BROS. RECORDS INC.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ARISTA RECORDS LLC, a Delaware limited liability  
company; ATLANTIC RECORDING  
CORPORATION, a Delaware corporation; BMG  
MUSIC, a New York general partnership; CAPITOL  
RECORDS, INC., a Delaware corporation; ELEKTRA  
ENTERTAINMENT GROUP INC., a Delaware  
corporation; INTERSCOPE RECORDS, a California  
general partnership; LAFACE RECORDS LLC, a  
Delaware limited liability company; MAVERICK  
RECORDING COMPANY, a California joint venture;  
MOTOWN RECORD COMPANY, L.P., a California  
limited partnership; PRIORITY RECORDS LLC, a  
California limited liability company; SONY BMG  
MUSIC ENTERTAINMENT, a Delaware general  
partnership; UMG RECORDINGS, INC., a Delaware  
corporation; VIRGIN RECORDS AMERICA, INC., a  
California corporation; and WARNER BROS.  
RECORDS INC., a Delaware corporation,  
Plaintiffs,

v.

DOES 1-16,  
Defendants.

CASE NO. 07-1641 LKK EFB

**ORDER GRANTING EX PARTE  
APPLICATION FOR LEAVE TO TAKE  
IMMEDIATE DISCOVERY**

1           Upon the Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery,  
2 the Declaration of Carlos Linares, and the accompanying Memorandum of Law, it is hereby  
3 ORDERED that Plaintiffs may serve immediate discovery on University of California, Davis to  
4 obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks documents that  
5 identify each Doe Defendant, including the name, current (and permanent) addresses and telephone  
6 numbers, e-mail addresses, and Media Access Control addresses for each Defendant.

7           Although parties must generally meet and confer prior to seeking expedited  
8 discovery, that requirement may be dispensed if good cause is shown. *See* Fed. R. Civ. P. 26(d);  
9 *Semitoool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275-76 (N.D. Cal. 2002). Here, the  
10 plaintiffs have presented evidence that the subpoena is necessary to identify the defendants, serve  
11 them with the complaint and summons, and prosecute their claims of copyright infringement. *See*  
12 *Gillespie v. Civletti*, 629 F.2d 637, 642 (9th Cir. 1980) ("where the identity of alleged defendants  
13 will not be known prior to the filing of a complaint . . . the plaintiff should be given an opportunity  
14 through discovery to identify the unknown defendants, unless it is clear that discovery would not  
15 uncover the identities, or that the complaint would be dismissed on other grounds."). Plaintiffs have  
16 further averred that records kept by internet service providers ("ISP") such as the University of  
17 California, Davis, are regularly destroyed, sometimes on a daily or weekly basis. *See* Linares  
18 Declaration, at ¶ 24. Based on the foregoing, the court finds that plaintiffs have demonstrated good  
19 cause for the expedited discovery.

20           The disclosure of this information is ordered pursuant to 20 U.S.C. § 1232g(b)(2)(B).  
21 Consistent with that provision, if and when the University of California, Davis is served with a  
22 subpoena, it shall, within five business days, give written notice to the subscribers whose identities  
23 are to be disclosed in response to the subpoena. Such written notice may be achieved by messages  
24 sent via electronic mail. If the University of California, Davis, and/or any defendant wishes to move  
25 to quash the subpoena, they shall do so before the return date of the subpoena.

1 IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in  
2 response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting  
3 Plaintiffs' rights under the Copyright Act.

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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY RM DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SONY BMG MUSIC ENTERTAINMENT, a  
Delaware general partnership; UMG  
RECORDINGS, INC., a Delaware corporation;  
ARISTA RECORDS LLC, a Delaware limited  
liability company; CAPITOL RECORDS, INC., a  
Delaware corporation; WARNER BROS.  
RECORDS INC., a Delaware corporation;  
INTERSCOPE RECORDS, a California general  
partnership; PRIORITY RECORDS LLC, a  
California limited liability company; ATLANTIC  
RECORDING CORPORATION, a Delaware  
corporation; FONOVisA, INC., a California  
corporation; MAVERICK RECORDING  
COMPANY, a California joint venture; MOTOWN  
RECORD COMPANY, L.P., a California limited  
partnership; ELEKTRA ENTERTAINMENT  
GROUP INC., a Delaware corporation; BMG  
MUSIC, a New York general partnership; VIRGIN  
RECORDS AMERICA, INC., a California  
corporation; and LAFACE RECORDS LLC, a  
Delaware limited liability company,

Plaintiff,

v.

DOES 1 - 16,

Defendants.

Case No. 07CV 0581 BTM AJB

~~PROPOSED~~ ORDER GRANTING  
PLAINTIFFS' *EX PARTE*  
APPLICATION FOR LEAVE TO  
TAKE IMMEDIATE DISCOVERY



1 Upon the Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery, the  
2 Declaration of Carlos Linares, and the accompanying Memorandum of Law, it is hereby:

3 ORDERED that Plaintiffs may serve immediate discovery on SBC Internet Services, Inc. to  
4 obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks documents that  
5 identify each Doe Defendant, including the name, current (and permanent) addresses and telephone  
6 numbers, e-mail addresses, and Media Access Control addresses for each Defendant. The disclosure  
7 of this information is ordered pursuant to 47 U.S.C. § 551(c)(2)(B).

8 IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in response to the  
9 Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under  
10 the Copyright Act.

11  
12 DATED: 4-19-07

By:   
United States District Judge

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MAY 10 2004

JAMES R. LARSEN, CLERK  
DEPUTY  
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LOUD RECORDS, LLC, a  
Delaware corporation; WARNER  
BROS. RECORDS INC., a  
Delaware corporation; ATLANTIC  
RECORDING CORPORATION, a  
Delaware corporation; VIRGIN  
RECORDS AMERICA, INC., a  
California corporation; PRIORITY  
RECORDS LLC, a California  
limited liability company;  
ELEKTRA ENTERTAINMENT  
GROUP INC., a Delaware  
corporation; BMG RECORDINGS,  
INC, a Delaware corporation;  
ARISTA RECORDS, INC., a  
Delaware corporation; BMG  
MUSIC, a New York general  
partnership; SONY MUSIC  
ENTERTAINMENT INC., a  
Delaware corporation; MAVERICK  
RECORDING COMPANY, a  
California joint venture; and  
CAPITOL RECORDS, INC., a  
Delaware corporation,

Plaintiffs,

v.

DOES 1-5,

Defendants.

NO. CV-04-0134-RHW

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR LEAVE TO TAKE  
IMMEDIATE DISCOVERY**

Before the Court is Plaintiffs' Motion for Leave to Take Immediate  
Discovery (Ct. Rec. 7). The Plaintiffs, members of the Recording Industry  
Association of America, Inc. ("RIAA"), have filed a complaint alleging that DOES

ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE  
IMMEDIATE DISCOVERY \* 1

1 1-5 illegally engaged in uploading and downloading copyrighted recordings  
2 through www.KaZaA.com, a peer to peer ("P2P") internet service (Ct. Rec. 1).  
3 While Plaintiffs are unable to identify the Does, they collected records of  
4 Defendants' Internet Protocol ("IP") address, the times the downloads or uploads  
5 took place, and information regarding the specific recordings that were  
6 downloaded or uploaded. The Plaintiffs were able to ascertain from Defendants'  
7 IP addresses that they were utilizing Gonzaga University as their Internet Service  
8 Provider ("ISP"). Plaintiffs seek statutory damages under 17 U.S.C. § 504(c),  
9 attorneys fees and costs pursuant to 17 U.S.C. § 505, and injunctive relief under  
10 17 U.S.C. §§ 502 and 503.

11 In their Motion for Leave to Take Immediate Discovery, the Plaintiffs seek  
12 leave to serve Gonzaga University, the ISP for Does 1-5, with a Rule 45 Subpoena  
13 Duces Tecum, requiring Gonzaga University to reveal the Defendant's names,  
14 addresses, email addresses, telephone number, and Media Access Control  
15 ("MAC") addresses.

16 The Ninth Circuit has held that "where the identity of alleged defendants  
17 will not be known prior to the filing of a complaint . . . the plaintiff should be  
18 given an opportunity through discovery to identify the unknown defendants,  
19 unless it is clear that discovery would not uncover the identities, or that the  
20 complaint would be dismissed on other grounds." *Gillespie v. Civiletti*, 629 F.2d  
21 637, 642 (9<sup>th</sup> Cir. 1980). Presumably, the discovery device anticipated by this  
22 ruling was Rule 45, under which a party may compel a nonparty to produce  
23 documents or other materials that could reveal the identities. See *Pennwalt Corp.*  
24 *v. Durand-Wayland, Inc.*, 708 F.2d 492 (9<sup>th</sup> Cir. 1983). The Court finds that this  
25 instance presents the very situation indicated by *Gillespie*. The Plaintiffs' case  
26 relies on the disclosure of the Does' identities, and those identities are likely  
27 discoverable from a third party.

28 Under Rule 26(d), Rule 45 subpoenas should not be served prior to a Rule

ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE  
IMMEDIATE DISCOVERY \* 2

1 26(f) conference unless the parties can show good cause. Fed. R. Civ. P. 26(d) ("a  
 2 party may not seek discovery from any source before the parties have conferred as  
 3 required by Rule 26(f) . . . . [u]nless the court upon motion . . . . orders  
 4 otherwise"); see *Semitoool, Inc. V. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275-  
 5 76 (N.D. Cal. 2002). The Plaintiffs have presented compelling evidence that the  
 6 records kept by ISP providers of IP addresses are regularly destroyed. Thus, good  
 7 cause has been shown.

8 Accordingly, **IT IS ORDERED** that:

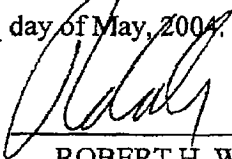
9 1. Plaintiffs' Motion for Leave to Take Immediate Discovery (Ct. Rec.  
 10 7) is **GRANTED**.

11 2. Plaintiffs are **GIVEN LEAVE** to serve immediate discovery on  
 12 Gonzaga University to obtain the identity of each Doe Defendant by serving a  
 13 Rule 45 subpoena duces tecum that seeks each Doe Defendants' name, address,  
 14 telephone number, email address, and Media Access Control address. As agreed  
 15 by Plaintiffs, this information disclosed will be used solely for the purpose of  
 16 protecting their rights under the copyright laws.

17 3. Plaintiffs are **ORDERED** to review Local Rule 7.1(g)(2) regarding the  
 18 citation of unpublished decisions. All unpublished decisions cited to the Court  
 19 have been disregarded.

20 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
 21 enter this order and to furnish copies to counsel of record.

22 **DATED** this 10 day of May, 2004.

23  
 24   
 25 ROBERT H. WHALEY  
 26 United States District Judge

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**ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE  
 IMMEDIATE DISCOVERY \* 3**

COBLENTZ, PATCH, DUFFY & BASS, LLP  
 One Ferry Building, Suite 200, San Francisco, CA 94111-4213  
 (415) 391-4800 • (415) 989-1663

JEFFREY G. KNOWLES (State Bar # 129754)  
 JULIA D. GREER (State Bar # 200479)  
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 San Francisco, California 94111  
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Attorneys for Plaintiffs  
 MAVERICK RECORDING CO.; WARNER BROS.  
 RECORDS INC.; ARISTA RECORDS, INC.; VIRGIN  
 RECORDS AMERICA, INC.; UMG RECORDINGS, INC.;  
 INTERSCOPE RECORDS; BMG MUSIC; SONY MUSIC  
 ENTERTAINMENT INC.; ATLANTIC RECORDING  
 CORP.; MOTOWN RECORD COMPANY, L.P.; and  
 CAPITOL RECORDS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MAVERICK RECORDING COMPANY, a  
 California joint venture; WARNER BROS.  
 RECORDS INC., a Delaware corporation;  
 ARISTA RECORDS, INC., a Delaware  
 corporation; VIRGIN RECORDS AMERICA,  
 INC., a California corporation; UMG  
 RECORDINGS, INC., a Delaware  
 corporation; INTERSCOPE RECORDS, a  
 California general partnership; BMG MUSIC,  
 a New York general partnership; SONY  
 MUSIC ENTERTAINMENT INC., a  
 Delaware corporation; ATLANTIC  
 RECORDING CORPORATION, a Delaware  
 corporation; MOTOWN RECORD  
 COMPANY, L.P., a California limited  
 partnership; and CAPITOL RECORDS, INC.,  
 a Delaware corporation,

Plaintiffs,

vs.

DOES 1 - 4,

Defendants.

CASE NO. C-04-1135 MMC

**[PROPOSED] ORDER GRANTING  
 PLAINTIFFS' MISCELLANEOUS  
 ADMINISTRATIVE REQUEST FOR  
 LEAVE TO TAKE IMMEDIATE  
 DISCOVERY**

1           Upon the Miscellaneous Administrative Request of Plaintiffs For Leave To Take  
2 Immediate Discovery, the Declaration of Jonathan Whitehead and the exhibit thereto, Plaintiffs'  
3 Request for Judicial Notice, and the Declaration of Zuzana J. Svihra, it is hereby:

4           ORDERED that Plaintiffs may serve immediate discovery on the University of  
5 California, Berkeley to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena  
6 that seeks information sufficient to identify each Doe Defendant, including the name, address,  
7 telephone number, e-mail address, and Media Access Control addresses for each Defendant.

8           IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in  
9 response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting  
10 Plaintiffs' rights under the Copyright Act.

11           Without such discovery, Plaintiffs cannot identify the Doe Defendants, and thus  
12 cannot pursue their lawsuit to protect their copyrighted works from infringement.

13  
14 Dated: April 28, 2004

James Larson U.S. Magistrate Judge  
~~United States District Judge~~

COLENTZ, PATCH, DUFFY & BASS, LLP  
One Ferry Building, Suite 200, San Francisco, CA 94111-4213  
(415) 391-4800 • (415) 989-1663



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002

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 WESTERN DIVISION

## CIVIL MINUTES - GENERAL

Case No. CV 04-1962 ABC (AJWx)

Date: April 2, 2004

Title: LONDON-SIRE RECORDS, INC., et. al. v. DOES 1-4

=====

PRESENT:

HON. ANDREW J. WISTRICH, MAGISTRATE JUDGEYsela Benavides

Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:  
None PresentATTORNEYS PRESENT FOR DEFENDANTS:  
None Present

ORDER REGARDING PLAINTIFFS' EX PARTE APPLICATION FOR LEAVE TO  
 TAKE IMMEDIATE DISCOVERY

Plaintiffs are thirteen record companies who have filed a lawsuit against four unnamed "doe" defendants for alleged copyright infringement. Plaintiffs filed a motion for leave to take immediate discovery on March 23, 2004. [Notice of Ex Parte Application for Leave to Take Immediate Discovery ("Notice") filed March 23, 2004]. Plaintiffs allege that defendants, using an online peer-to-peer ("P2P") media distribution system, made available for distribution, and in fact distributed, copyrighted songs without license or other authority to do so, thereby infringing plaintiffs' copyrights. [See Memorandum of Law in Support of Ex Parte Application For Leave to Take Immediate Discovery ("Memorandum") filed March 23, 2004, at 2]. Plaintiffs have acquired the Internet Protocol ("IP") addresses assigned to each of the four defendants on the dates and times of the infringing activity. [Memorandum 2]. Using a public database, plaintiffs determined that the subject IP addresses belong to the University of Southern California ("USC"). [Memorandum 2-3]. As an Internet Service Provider ("ISP"), USC maintains a subscriber activity log indicating which of its subscribers were assigned the IP addresses in question on the relevant dates and times. [Memorandum 3]. In plaintiffs' experience, most ISPs maintain subscriber activity logs for only a short period of time before destroying the information contained in the logs. [Memorandum 3]. From the subscriber logs, USC can use the IP addresses and temporal information provided by plaintiffs to identify the true names, street addresses, phone numbers, e-mail addresses, and Media Access Control ("MAC") addresses for each defendant. [Memorandum 3]. Plaintiffs ask this Court to allow immediate issuance of a subpoena directing USC to produce defendants' names and the other personal information described above so that plaintiffs may contact defendants in an attempt to negotiate a resolution to plaintiffs' claims, or failing that, to add defendants as named parties to this litigation.

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003

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES--GENERAL

Generally, parties must meet and confer prior to seeking expedited discovery. See Fed. R. Civ. P. 26(f). That requirement, however, may be dispensed with if good cause is shown. See Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 275-76 (N.D. Cal. 2002). Plaintiffs have shown good cause. The true identities of defendants are unknown to plaintiffs, and this litigation cannot proceed without discovery of defendants' true identities. [See Memorandum 7-9].

Subject to the following qualifications, plaintiffs' ex parte application for leave to take immediate discovery is granted.

If USC wishes to file a motion to quash the subpoena or to serve objections, it must do so before the return date of the subpoena, which shall be no less than twenty-one (21) days from the date of service of the subpoena. Among other things, USC may use this time to notify the subscribers in question.

USC shall preserve any subpoenaed information or materials pending compliance with the subpoena or resolution of any timely objection or motion to quash.

Plaintiffs must serve a copy of this order on USC when they serve the subpoena.

Any information disclosed to plaintiffs in response to the Rule 45 subpoena must be used by plaintiffs solely for the purpose of protecting plaintiffs' rights under the Copyright Act as set forth in the complaint.

IT IS SO ORDERED.

cc: Parties

MINUTES FORM 11  
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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Interscope Records, et al.,  
Plaintiffs,  
v.  
Docs 1 - 4,  
Defendants.

No. CV-04-131 TUC - JM

## ORDER

Pending before the Court is the Plaintiffs' *ex parte* Motion for Leave to Take Immediate Discovery [Docket No. 2]. Upon consideration of the Motion and the supporting Memorandum of Law, and the declaration of Jonathan Whitehead and the exhibit attached thereto, it is hereby:

ORDERED that Plaintiffs' Motion for Leave to Take Immediate Discovery [Docket No. 2] is GRANTED;

IT IS FURTHER ORDERED that Plaintiffs may serve immediate discovery on the University of Arizona to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control addresses for each Defendant;

IT IS FURTHER ORDERED that any information disclosed to Plaintiffs in response to the Rule 45 subpoena shall be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act as set forth in the Complaint;

JM

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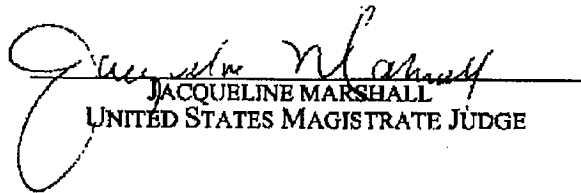
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1 IT IS FURTHER ORDERED that, if and when the University of Arizona is served  
2 with a subpoena, within five (5) business days thereof it shall give written notice, which can  
3 include use of e-mail, to the subscribers whose identities are to be disclosed in response to  
4 the subpoena. If the University of Arizona and/or any Defendant wishes to move to quash  
5 the subpoena, they shall do so before the return date of the subpoena, which shall be twenty-  
6 five (25) business days form the date of service;

7 IT IS FURTHER ORDERED that, if and when the University of Arizona is served  
8 with a subpoena, the University of Arizona shall preserve the data and information sought  
9 in the subpoena pending resolution of any timely filed motion to quash;

10 IT IS FURTHER ORDERED that counsel for Plaintiffs shall provide a copy of this  
11 Order to the University of Arizona when the subpoena is served.

12 Dated this 25<sup>th</sup> day of March, 2004.

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16 JACQUELINE MARSHALL  
17 UNITED STATES MAGISTRATE JUDGE  
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